DPS – 223 Unreported – Not Precedential

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-4507

ARNOLD EISEN,

Appellant

v.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES OF AMERICA; JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 02-cv-8946)
District Judge: Honorable Timothy J. Savage

Submitted For Possible Dismissal Under 28 U.S.C. § 1915 (e)(2)(B) or Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
May 30, 2003

Before: ALITO, ROTH AND RENDELL, CIRCUIT JUDGES

(Filed September 18, 2003)

OPINION

PER CURIAM

Appellant, Arnold Eisen, appeals the District Court's order dismissing his complaint as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B). On December 11, 2002, Eisen filed his pro se complaint pursuant to 42 U.S.C. § 1983 after filing a motion for leave to proceed in forma pauperis (IFP). Within his two page submission, Eisen complained of "treason and other high crimes" by the defendants, President Bush and Attorney General Ashcroft, against the United States of America. Complaint at 1. In further explanation, Eisen alleged that "they did conspire together publicly and privately to subvert the purpose and intention of the Constitution of the United States of America ... to further their own, private and non-legislative goals, gains, and ambitions." Id. For relief, Eisen asked that "the resources of the People of the United States of America be returned in full to the Treasury" as well as the "restoration of the 'integrity' of the Constitution of [t]he United States of America ... and punishment of the defendants." Complaint at 2. On that same day, the District Court granted Eisen's motion to proceed IFP and dismissed the complaint as legally frivolous. Eisen timely filed his notice of appeal.

In this Court, Eisen filed a Motion of "Objection to Appointment of Counsel," which we construed as a motion by appellant to "Strike Appearance of Office of United States Attorney on behalf of Appellees." Appellees also filed a motion for summary affirmation of the District Court's decision as well as a request to stay the briefing schedule. Eisen filed a response in opposition to appellee's motion. We granted the motion to stay the briefing schedule and now before us have the motion for summary affirmation as well as appellant's objection to the entry of appearance of appellee's counsel.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Eisen has been granted leave to proceed in forma pauperis on appeal. After careful review of the record, we conclude that this appeal must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) as frivolous given that it lacks an arguable basis in law or fact.

Under § 1915(e)(2)(B), a court must dismiss a case "at any time" if it determines an action or appeal (i) is frivolous or malicious, (ii) fails to state a claim upon which relief may be granted, or (iii) seeks monetary damages from a defendant with immunity. An action or appeal can be frivolous for either legal or factual reasons. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A legally frivolous action is one "based on an indisputably meritless legal theory." Id. at 327.

To state a viable § 1983 claim, a plaintiff must allege facts showing a deprivation of a constitutional right, privilege, or immunity by a person acting under color or state law. Daniels v. Williams, 474 U.S. 327, 330 (1986). Eisen argues that President Bush and Attorney General Ashcroft have committed treason and other high crimes. However, he does not offer any factual allegations nor does he provide any legal basis for his complaint. Eisen's complaint is, thus, utterly void of any allegations to support a cognizable claim under § 1983.

Because we determine that the appeal presents no arguable legal issues, we will dismiss the appeal pursuant to 28 U.S.C. § 1915(e)(2)(B). Neitzke v. Williams, 490 U.S. 319 (1989). Eisen's motion of Objection to Appointment of Counsel is likewise denied. Appellees' motion for summary affirmance is denied as moot.

DPS – 223

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Summary Action Under Third Circuit LAR 27.4 and I.O.P. 10.6
May 30, 2003

Before: ALITO, ROTH AND RENDELL, CIRCUIT JUDGES

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted for possible dismissal under 28 U.S.C. § 1915(e)(2)(b) or summary action under Third Circuit LAR 27.4 and I.O.P. 10.6. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the appeal is dismissed under 28 U.S.C. § 1915(e)(2)(B). All of the above in accordance with the opinion of this Court.

ATTEST:
/s/ Marcia M. Waldron
Clerk

DATED: September 18, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARNOLD EISEN	:	CIVIL ACTION
	:	
VS.	:	
	:	
MR. GEORGE W. BUSH,	:	
President of the United States	:	
of America, et al	:	NO. 02-8946

ORDER

AND NOW, this 11th day of December, 2002, it is ORDERED that plaintiff's motion for leave to proceed in forma pauperis is GRANTED pursuant to 28 U.S.C. § 1915 and plaintiff's complaint is DISMISSED AS LEGALLY FRIVOLOUS pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

/s/ Timothy J. Savage, J.
TIMOTHY J. SAVAGE, J.